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EMBASSY OF THE
UNITED STATES OF AMERICA
OFFICE OF THE AMBASSADOR

RELEASED IN FULL

Bogota, Colombia
July 24, 2001

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Dear Senator Leahy:

I wanted to respond to your letter of July 14 regarding the Santo Domingo case. As I mentioned in my letter to you of February 23, this Embassy and many others have continued to encourage the Colombian Air Force to pursue actively its investigation into this case. I believe we are beginning to see results. We need to recognize the steps taken by Colombian authorities, while urging that this case be pursued through to its final resolution.

The device which exploded in Santo Domingo appears to have been a U.S. manufactured ANM-42 cluster bomb. It also appears that the helicopter involved in the incident was U.S. made. The U.S. Air Force has not used the ANM-42 for over 20 years, and we do not know how the Colombian Air Force obtained the device. I suspect we will never know how this cluster bomb ended up in Colombia's inventory.

In his December 30, 1998 letter to you, former Ambassador Kamman stated that the Colombian military's preliminary conclusion that a truck bomb exploded appeared to have credibility. The information now at hand leads us to very different conclusions. You asked if there was an intention on the part of the Colombian Air Force to mislead the Embassy. It is possible, although we will never know for sure. I believe, however, that if Colombian authorities did not now agree that this earlier version of events was flawed, they would not have reopened their investigation.

In recent weeks, there have been some positive developments in this case.

The Honorable
Patrick Leahy,
United States Senate.

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: DONALD A. JOHNSTON
DATE/CASE ID: 29 MAY 2002 200102988

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Specifically, on June 15, a general jurisdiction first instance military judge ordered that two Colombian Air Force officers and one non-commissioned officer be criminally charged with negligent homicide and assault. They have been transferred out of the Air Force unit which was involved in the incident.

Separately, the office of the Procurador, in effect a government-wide inspector general with broad disciplinary authority, has also been proceeding in its investigation. Its delegate for human rights has filed administrative charges against the same three Air Force members, as well as an Army Major, and it continues to collect evidence. Although neither institution acted as quickly as it should have, both the Procurador and the military now seem to be conducting serious investigations.

Your letter raises the issue of the role employees of Airscan, a private U.S. firm, played in this incident. There has been a lot of confusion about Airscan. I will try to be as clear as possible about what we know.

In 1996, Occidental Petroleum entered into a contract with Airscan to provide an aircraft to overfly the pipeline which serves Occidental's oil fields in Arauca. However, by 1998 (when the Santo Domingo killings took place), Airscan and Occidental no longer had a contractual relationship. Instead, Airscan was contracted directly by the Colombian Air Force to assist in pipeline patrol and protection. Occidental, through its partner, the Colombian state oil company Ecopetrol, had a contract with the Air Force to dedicate a certain number of flight hours to patrolling the pipeline.

What was Airscan doing when the citizens of Santo Domingo were killed? We will know more when videotapes taken by its aircraft are examined by forensic specialists. The purpose of the Airscan aircraft was surveillance. It was under the command of Colombian Air Force officers on board. In 1999, the Air Force showed some Embassy officials a copy of one of the tapes, largely to support its then-version of events. One colleague in the Embassy who saw the blurry tape told me it was hard to make sense of it, at least to a layperson. For that reason, we will assist in having the video examined by forensic specialists.

How we handle the request for information about the American citizens presumably on board the aircraft is a difficult issue for us. The office of the Procurador has asked if we have any information regarding the whereabouts of the three citizens whose names are already known to the Procurador's office. Press reports indicate these individuals left Colombia at the end of their assignments. We found the name and U.S. address of an American citizen in our consular files who appears to be one of the three the Procurador inquired about because the individual registered with us as an American citizen residing in Colombia. Because of the restrictions of the Privacy Act, and our long-standing consular practice that information American citizens give to us cannot be used for any secondary purposes, I cannot give out the U.S. address of this citizen to the Procurador.

If we received a request for assistance from a Colombian law enforcement agency (particularly the National Prosecutor's Office, "Fiscalia") in the context of a criminal investigation, we would provide all information we could consistent with international agreements which govern these exchanges. Basically, there has to be some suspicion that the American citizens engaged in some criminal activity. At the present time, that does not exist.

Perhaps because of the confusion and misinformation surrounding the role of American contractors under Plan Colombia, we have been asked by NGOs visiting Bogota if the U.S. government or its employees had anything to do with the flight or with its crewmembers. Let me assure you that we did not.

Through the Embassy, the U.S. government has responded positively to requests for assistance in the investigation of the Santo Domingo case, including the provision of technical analysis of bomb fragments by the FBI laboratories. We have also agreed to analyze the videotapes taken by the Airscan aircraft to which I referred above, and we are waiting to receive them. We have made known our willingness to provide additional technical assistance, should the need arise.

The initial response of Colombian authorities was inadequate and disappointing. However, I believe that officials of both the military justice system and the disciplinary system of the Procurador are conducting

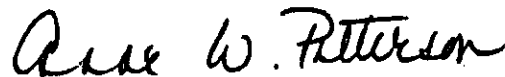
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serious investigations, which indicates that progress is being made in holding members of the armed forces accountable to answer accusations of abuse of human rights. Colombia has also undertaken major reforms of its military justice system, and more recent cases have shown that the system is more willing to prosecute members of the security forces than before.

In response to your question about the Leahy Amendment, whether or not effective measures are being taken is a question which will be decided in Washington. While I am encouraged by recent developments, we are waiting for the results of the new investigations before I make a recommendation to my superiors in Washington about the applicability of the Leahy Amendment.

I can assure you that I will continue to watch this case as it develops.

Sincerely,

A handwritten signature in cursive script that reads "Anne W. Patterson".

Anne W. Patterson
Ambassador

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